



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 8<sup>th</sup> August, 2023**

+ **W.P.(C) 7259/2018**

**SH. M. RAJMANNAR.**

..... Petitioner

Through: **Ms.Prabha Sharma, Advocate**

versus

**VICE-CHANCELLOR, IGNOU**

..... Respondent

Through: **Mr.Aly Mirza, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

*“i. ISSUE the WRIT OF MANDAMUS or any other appropriate writ and/or order or direction to set aside/quash the impugned office order dt.19.11.2017 passed by the respondent; and*

*ii. ISSUE the WRIT OF MANDAMUS or any other appropriate writ and/or order or direction against the respondent for granting one advance incentive in favor of the petitioner and other consequential benefits arising therefrom w.e.f 01.01.2006 to the petitioner; and*

*iii. PASS any other and further order (s) which may be deemed to be just, fit & proper in favor of the Petitioners in the light of the facts & Circumstances of the case.”*

2. The brief facts leading to filing of the instant petition have been recapitulated herein below:



- a) The petitioner had worked as a Producer, EPMC with the respondent No. 1 from 6<sup>th</sup> March 2001 till his placement in selection grade on 2<sup>nd</sup> July 2007. The petitioner completed his degree of M.Phil. while in service in the year 2004.
- b) The Ministry of Human Resource Development issued a Scheme in 2008 whereby, it sanctioned the grant of advanced increment for completion of M.Phil. degree while being in service. The said Scheme is titled as ‘Revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of the Central Government employees on the recommendations of the Sixth Central Pay Commission applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges.’ (hereinafter “Scheme, 2008”).
- c) On 12<sup>th</sup> November 2008, the respondent replied to the petitioner’s representation dated 13<sup>th</sup> October 2008, stating that there is no provision for grant of advanced increment for completion of M.Phil. degree while being in service under the Scheme of 5th Central Pay Commission (hereinafter “CPC”).
- d) Thereafter, the petitioner continued to make representations dated 26<sup>th</sup> July 2011, and 28<sup>th</sup> August 2015, which were



rejected *vide* respondent's reply dated 26<sup>th</sup> June 2015, and 31<sup>st</sup> October 2016, respectively.

- e) Another representation dated 23<sup>rd</sup> November 2016, was also made to the respondent for grant of one advance incentive but the respondent rejected it *vide* impugned office order/reply dated 19<sup>th</sup> November 2017. Henceforth, the petitioner being aggrieved by the impugned office order/reply dated 19<sup>th</sup> November 2017, filed the present writ petition under Article 226 of the Constitution of India.

3. Learned Counsel appearing on behalf of the petitioner submitted that Clause (viii) of Para 7 of the Scheme dated 31<sup>st</sup> December 2008, *qua* incentives for Ph.D./M.Phil. and for other higher qualification, lays down the provisions regarding grant of one advance incentive on completing M.Phil. degree while in service.

4. It is submitted that by virtue of Para 7 clause (viii), the petitioner, who has acquired M. Phil. degree in 2004, while in service is eligible under the Scheme, 2008. Moreover, the petitioner made several representations dated 13<sup>th</sup> October 2008, 26<sup>th</sup> July 2011, and 28<sup>th</sup> August 2015, which were outrightly rejected *vide* a reply dated 12<sup>th</sup> November 2008, 26<sup>th</sup> June 2015, and 31<sup>st</sup> October 2016, respectively. Another representation dated 23<sup>rd</sup> November 2016, was also made to the respondent for the grant of one advance incentive but the respondent rejected it *vide* another impugned office order/reply dated 19<sup>th</sup> November 2017.



5. It is submitted that the impugned office order is arbitrary as the respondent has not rendered valid and legally justified reasons for rejecting the petitioner's representations.

6. It is submitted that by misconstruing the said Scheme, 2008, the respondent is making the qualified-unqualified and equal-unequal with their counterparts working in same department by raising the differences in pay. The Scheme, 2008 does not debar the lecturers acquiring M. Phil. degree while in service prior to 1<sup>st</sup> January 2006, for grant of one advance increment.

7. It is further submitted that the petitioner is qualified for grant of one advance incentive as per Clause (viii) of Para 7 of the Scheme, 2008, and mere difference in the date of attaining the M.Phil. degree should not to be treated as the intent behind the issuance of the Scheme, 2008, for grant of advance incentive.

8. It is submitted that the petitioner could not file the present writ petition immediately after the impugned office order dated 19<sup>th</sup> November 2017, as he was going through a financial crisis in the family. Further, in the month of April 2018, the file of petitioner along with the relevant documents got misplaced by the counsel due to shifting of office. Thereafter, in the month of May 2018, the petitioner's counsel got unwell and had to leave Delhi due to certain urgency.

9. It is submitted that the said impugned order rejecting the representation of the petitioner for grant of advanced increment is arbitrary



in nature and is also against the principles of natural justice and equity. Hence, the same is liable to be set aside.

10. *Per contra*, learned Counsel appearing on behalf of the respondent vehemently opposed the submissions on behalf of the petitioner stating the preliminary objection of maintainability on the account that the present petition suffers from delay and laches.

11. It is submitted that *vide* the order dated 12<sup>th</sup> November 2008, the representation of the petitioner has already been rejected and the same was never challenged. The impugned order dated 19<sup>th</sup> November 2017, was passed only on the basis of the order dated 12<sup>th</sup> November 2008, which was never challenged and hence, has attained finality. Therefore, the impugned order dated 19<sup>th</sup> November 2017, does not confer upon the petitioner any fresh cause of action to institute the present petition. Hence, the petition is liable to be dismissed at the outset.

12. It is submitted that according to the order dated 12<sup>th</sup> November 2008, no advance increment has been envisaged for completion of M.Phil. degree in service and since the same remained unchallenged, it had attained finality.

13. It is further submitted that the Scheme, 2008, is w.e.f, 1<sup>st</sup> January 2006, and therefore, no retrospectivity can be inferred in view of express mandate *qua* the said cut-off date.

14. In view of the foregoing submissions, the learned counsel for the respondent submitted that the instant petition be dismissed.

15. Heard learned counsel for the parties and perused the material on record.



16. To adjudicate upon the issue in the instant matter, it is imperative to set out certain relevant facts. It is the case of the petitioner that he is entitled for one advance increment as per Clause (viii) of Para 7 under the Scheme, 2008, since he has completed his M.Phil. degree in the year 2004, while being in service. The said provision has been reproduced herein for reference:

***“7. Incentives for Ph.D./M.Phil. and other higher qualification:***

*(viii) Teachers who acquire M.Phil, degree or a post graduate degree in a professional course recognized by the relevant Statutory Body/Council, while in service, shall be entitled to one advance increment. If post graduate qualification in a particular subject is not a mandatory requirement at the entry level of recruitment, acquisition of such a qualification for in service candidates shall also entitle them to one advance increment.”*

17. It is observed on perusal of the petition that the petitioner has made several representations since 2008. The initial representation dated 13<sup>th</sup> October 2008, of the petitioner was rejected *vide* order dated 12<sup>th</sup> November 2008, and admittedly the said order had not been challenged before any court of law. Hence, the order dated 13<sup>th</sup> October 2008, has attained finality. The petitioner made another representation on 23<sup>rd</sup> November 2016, and the same was decided *vide* the impugned order dated 19<sup>th</sup> November 2017. The relevant paragraph has been reproduced herein:

*“With reference to your request for granting an advance increments on completion of M.Phil in 2004 while in service, you are hereby informed that before 01.01.2006 there was no*



*provision of advance increment for acquiring M.Phil. while in service. Hence, your request cannot be acceded to.”*

18. It is noted that the respondent rejected the petitioner’s representation dated 23<sup>rd</sup> November 2016, on the ground that the as per Clause (i) of Para 9 of the Scheme, 2008 the said Scheme is applicable w.e.f 1<sup>st</sup> January 2006. The abovementioned Clause is reproduced herein:

***“9. Date of implementation of revised pay and allowance and payment of arrears:***

- (i) *The revised Pay and revised rates of Dearness Allowance under this Scheme shall be effective from 1.01.2006. The revised rates of all other applicable allowances such as House Rent Allowance, Transport Allowance, Children Education Allowance etc. and the non-compounded advance increments shall take effect from 1.09.2008.”*

19. At this juncture, it is important to note that though the petitioner has raised the issue of the retrospective applicability of the said Scheme, the respondent has outrightly opposed the submissions of the petitioner. The respondent has argued that the instant petition suffers from gross delay and laches which makes the petition liable to be dismissed solely on the ground of non-maintainability. Therefore, this Court shall deal with the issue of maintainability first.

20. At the first instance, it is observed that the petitioner has not challenged the first rejection office order dated 12<sup>th</sup> November 2008, in the instant petition. The impugned order dated 19<sup>th</sup> November 2017, is only a reiteration of the denial and rejection to the petitioner’s representation.



21. The respondent rejected the petitioner's initial request for one advance increment *vide* office order dated 12<sup>th</sup> November 2008, i.e., more than 10 years ago. The rejection order dated 12<sup>th</sup> November 2008, is still alive and has attained finality since the same was never challenged by the petitioner before any competent authority either in appeal or in writ jurisdiction.

22. It is a fundamental principle in the administration of justice that the Courts will aid those who are vigilant and who do not sleep on their rights. Basically, if the party who is seeking reliefs moves the plea after considerable delay and is otherwise guilty of laches, the Courts in such circumstances would refuse to exercise the writ jurisdiction in favour of that party.

23. The above said principle that ascribes limitation on the exercise of power of the High Court in the event of an unreasonable delay, can be supported by the judgment of the Privy Council in ***Lindsay Petroleum Co. v. Wood***, 1874 LR 5 PC 221. It was held by the Court therein, that the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by its conduct done something which might fairly be regarded as neglect, in such cases, lapse of time and delay are most material. The said principles of English Law have been accepted by the Hon'ble Supreme Court in the matter of ***Tilokchand Motichand v. H.B. Munshi***, (1969) 1 SCC 110, ***Rabindranath Bose v. Union of India***, (1970) 1 SCC 84 and further in ***Eastern Coalfields Ltd. v. Dugal Kumar***, (2008) 14 SCC 295.



24. The Hon'ble Supreme Court in the judgment of *State of M.P. v. Bhailal Bhai*, 1964 SCC OnLine SC 10, has discussed the scope regarding delay and laches in a very peculiar way. It has been held by the Hon'ble Court that the maximum period defined to initiate a civil action before a Civil Court to seek a relief may ordinarily be taken to be a reasonable standard limitation period by which delay in seeking remedy under Article 226 of the Constitution of India, can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action. However, in the event the delay is more than the period prescribed, it will almost always be proper for the Court to hold that it is unreasonable.

25. The abovementioned tenets of law are the bedrock of imparting justice. The Hon'ble Supreme Court in *Shiv Dass v. Union of India*, (2007) 9 SCC 274, on the aspect of delay and laches in seeking relief under a writ jurisdiction has further reiterated the settled law, wherein, the Hon'ble Court observed as under:

*“8. It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction.....”*

The said observation has also been followed in the matter of *Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corpn.*, 2022 SCC OnLine SC 641.



26. Further, the Hon'ble Supreme Court in the judgment of *Eastern Coalfields Ltd. (Supra)* has explicitly held that an application for leave of judicial review should be made promptly. If the same is made on a belated stage, it may be rejected. The relevant paragraph of the judgment is reproduced herein:

*“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.”*

27. In the present petition, it has also been observed that the petitioner had made his initial representation on 13<sup>th</sup> October 2008, then on various other occasions and the last representation was made on 23<sup>rd</sup> November 2016. In this regard, this Court is of the view that merely by way of making repeated representation, after the rejection of initial representation cannot be held to be a satisfactory explanation of delay. The same has also been observed by the Hon'ble Supreme Court in the judgment of *State of T.N. v. Seshachalam, (2007) 10 SCC 137* and *State of Orissa v. Pyarimohan Samantaray, (1977) 3 SCC 396*. The Court in *Seshachalam (Supra)* observed as under:



*“16. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No.126 dated 29-5-1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute.(See State of H.P. v. Kailash Chand Mahajan [1992 Supp (2) SCC 351:1992 SCC (L&S) 874:(1992) 21 ATC 528])”*

28. The petitioner herein has only challenged the order dated 19<sup>th</sup> November 2017, which is only a reiteration of the rejection enumerated in the rejection order dated 12<sup>th</sup> November 2008, which was passed more than 10 years ago. The question that that this Court is inclined to comment upon is, when the earlier order of the year 2008 is still alive, can the impugned order of the year 2018 be amenable to be challenged.

29. In this regard, this Court is of the view that the petitioner's grievances arose in the year 2008 when his request for one advance increment was rejected by the respondent. The subsequent rejection orders during the course of past 10 years are merely the repetition of the stand taken by the respondent in rejecting the petitioner's request.



30. Since the petitioner has failed to challenge the order of the year 2008 which is the basic order accruing cause of action in favour of the petitioner to claim for reliefs, any subsequent order which only ascribes the previous stand taken by the respondent years ago, cannot be tested before this Court due to the reason that there is an absence of challenge to the basic order.

31. In light of the above, it is observed by this Court that delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. The said doctrine is an important facet to determine the entitlement of the party seeking relief before a writ Court.

32. It is also observed that the Courts ordinarily does not permit an inordinate and belated approach for redressal of the grievances under the extraordinary jurisdiction enshrined under Article 226 of the Constitution of India because it is likely to cause extreme confusion and public inconvenience, thereby, violating the law settled by the Hon'ble Supreme Court in a catena of judgments.

33. If a writ jurisdiction is exercised post a delay which is not substantiated with any reasons, it might have an effect of inflicting hardship and inconvenience, further causing injustice on third parties. Furthermore, when a writ jurisdiction is invoked, unexplained delay is an important factor which also weighs upon the High Court in deciding whether or not to exercise such jurisdiction, considering the delay and further developments.

34. The above said principle embodied in the equity's maxim 'delay defeats equity' is intended to discourage unreasonable delay in presentation of claims and enforcement of rights. However, this rule is not absolute, as



the laches which will disqualify for reliefs must be unreasonable under the particular circumstance; the same is not the situation herein.

35. It is noted that the petitioner's grievance arose in the year 2008, when the respondent rejected his initial request of one advance increment. The petitioner kept on making representations during the past 10 years without approaching any other forum for redressal of his grievances. Merely making representations time and again, irrespective of the fact that the the same representation is only getting rejected by the respondent does not grant the petitioner any right to approach this Court and therefore, owing to such unreasonable and neglectful conduct on the part of the petitioner, the petitioner cannot be held to be entitled to seek reliefs at such a belated stage.

36. Further, the repeated representation did not give rise to a fresh cause of action to the petitioner and mere making of representation cannot justify the petitioner's belated approach. According to this Court, the petitioner cannot be stated to be vigilant of his rights and has acquiesced with the situation from the year 2008 to 2018 i.e., almost for a period of ten years and therefore, this Court does not feel that it should exercise its extraordinary and discretionary writ jurisdiction thereby, granting reliefs to a lethargic litigant like the petitioner. The petition filed by the petitioner is grossly belated with no satisfactory explanation for the delay.

37. In the instant case, the order dated 12<sup>th</sup> November 2008, attained finality *inter-se* between the parties as admittedly the said order was not put to challenge before any forum. The aforesaid order which attained finality crystallized the right of the petitioner and the respondent. This Court is not



inclined to extend its discretion to the petitioner who has reflected a completely negligent attitude to assert his right and approached after an inordinate delay.

38. In view of the facts, circumstance and settled principles of law, it becomes evident that owing to no accrual of fresh cause of action post rejection of the petitioner's initial representation *vide* office order dated 12<sup>th</sup> November 2008, the present petition patently suffers from flagrant delay and laches for having been filed after a huge interval. This Court is of the view that there is no accrual of a fresh cause of action and accordingly, the present petition at the very threshold suffers from laches and delay.

39. At the outset, the instant petition is affected by an unreasonable delay and, therefore, the petition cannot be entertained and further deserves to be dismissed on the ground of delay and laches itself. This Court also discerns no material to establish the propositions put forth by the petitioner with regard to the delay.

40. In view of the above discussions, this writ petition is accordingly dismissed. Pending applications, if any, also stand dismissed.

41. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**AUGUST 8, 2023**

Dy/ryp

*Click here to check corrigendum, if any*